90-1916

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LAWRENCE S. KRAIN,

Petitioner,

v.

RONALD GEORGE, LAUGHLIN WATERS, GEORGE DEUKMEJIAN, RALPH GEFFEN, JOHN G. DAVIES,

and

UNIVERSITY OF MICHIGAN HOSPITALS, DAVID KUHL, M.D., DAVID EAGLESON, ROBERT STONE, CONSUELO MARSHALL, MATTHEW BYRNE, TERRY HATTER, UNITED STATES GOVERNMENT, FREDI JACKSON, MICHELLE WITTE,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

LAWRENCE S. KRAIN, M.D.
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Pro Se

QUESTIONS PRESENTED

1. Does the summary affirmance procedure of the 7th Circuit Court of Appeals versus other circuits (such as the 9th Circuit which has case decisions such as *Noll v. Carlson*, 809 F.2d 1146 which protects pro se litigants from judicial tyranny) deny pro se litigants due process?
2. Were anti-Semitic allegations in petitioner's complaint properly considered by the 7th Circuit and would not petitioner's allegations of racial prejudice against Krain as a born Jew be valid under 42 USC 1981?
3. Were petitioner's State and Federal claims frivolous and if they were should not the Federal Courts have given detailed reasons to a pro se litigant before dismissal (as to why the appellate and district courts so ruled) without sufficient reason?

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PRAYER

Petitioner Lawrence S. Krain respectfully prays that a writ of certiorari issue to review two judgments and orders of the 7th Circuit Court of Appeals in related cases entered on December 4, 1990, dealing with identical issues.

OPINIONS BELOW

The opinion of the 7th Circuit Court of Appeals (to petitioner's knowledge) is not published in the official reporters; the court's opinion denying review of the U.S. District Court is attached hereto in the Appendix.

JURISDICTION

On December 4, 1990, the 7th Circuit Court of Appeals in Appellate Cases 90-2554 and 90-3079 without a full briefing used a summary affirmance procedure peculiar to the 7th Circuit Court of Appeals denying appellant a full briefing, oral arguments and requests for judicial notice. This court has jurisdiction under the 5th and 14th amendments of the U.S. Constitution to review the decisions of the 7th Circuit under U.S. Supreme Court rules of procedure.

PERTINENT CONSTITUTIONAL PROVISIONS

(1) Amendment XIV (equal protection clause)

Amendment XIV, Section 1:

. . . no state shall . . . deprive any person of life, liberty, or property, without due process of law. . . .

Amendment V (due process clause)

(2) Equal protection and due process clauses of the 14th Amendment to U.S. Constitution.

(3) Due process clause of the 5th amendment to U.S. Constitution.

STATEMENT OF THE CASE

1. Nature of the Cases

Both complaints arose under Title 42 USC 1981, 1983, 1985, 1986, 1988, and 2000 *et seq.* as well as the 4th, 5th, 6th, and 14th Amendments to the U.S. Constitution and sought injunctive relief. *Krain v. U. of Michigan Hospitals* was filed February 20, 1990, and denied appellate consideration on December 4, 1990. *Krain v. George, et al.*, was filed June 26, 1990, and denied appellate consideration on December 4, 1990. There are associated state counts for intentional infliction of emotional distress and injunctive relief under the Federal Civil Rights Act in both complaints. *Krain v. U. of Michigan Hospitals* also had causes of action for civil fraud, negligent misrepresentation, and medical malpractice and the U.S. government and its agents were defendants in Appellate No. 90-2554 (U.S.D.C. No. 90 C 972).

All defendants/respondents are sued as individuals with long-term anti-Semitic animus. Defendant/respondent George is alleged to be a California State Appellate Judge. Defendant/respondent George is alleged to have conspired with the other defendants/respondents to delay and obstruct plaintiff/appellant's U.S. District Court suits in Los Angeles. Defendant/respondent George is alleged to belong or to have belonged to private clubs that exclude Jews, and to reside or to have resided in houses with restrictive covenants that exclude Jews.

In *Krain v. George, et al.*, Appellate No. 90-3078 (U.S.D.C. No. 90 C 3645) defendant/respondent George is alleged to have failed to disqualify himself, despite anti-Semitic bias, and engaged in a pattern of anti-Semitic behavior by failing to allow prosecution of Nazi skinheads who burned and defaced plaintiff/appellant's temple and burned petitioner's medical office in Anaheim, California. Petitioner is a triple board certified physician currently licensed and practicing in 10 states. Defendants/respondents are alleged to have failed to stop anti-Semitic policies of the Orange County Medical Society when plaintiff/appellant sued them.

It is alleged that defendants/respondents in both cases failed to investigate racial riots and hatred of Jews by Nazi skinheads in Orange County, California, who terrorized plaintiff/appellant and violated his civil rights. Defendants/respondents are alleged to have individually encouraged and selectively denied Rabbis and Kosher food and Jewish services to Orange County pre-trial jail detainees (including petitioner), and to have selectively printed cases in federal law books involving Jews, while failing to include captioned Catholic or Republican defendants.

Defendants/respondents are alleged to have sat in collegial meetings to try to prevent plaintiff/appellant from

filing cases, to have illegally ordered plaintiff/appellant not to appeal, and to have illegally engaged in one-sided investigation of matters not before them. Defendants/respondents are also alleged to have illegally assigned themselves to plaintiff/appellant's cases and refused to disqualify themselves despite plaintiff/appellant's motions and objections.

Krain was a practicing physician (dermatologist) who treated alleged prostitutes that Deukmejian, George, Eagleson and other defendants are alleged to have seen and had relations with. Defendant/respondent Deukmejian engaged in vindictive conspiratorial acts against petitioner as Governor and Attorney General to cover up his private sexual and anti-Semitic escapades and is alleged to have eliminated 14 Jews from their superior court seats in Los Angeles and Orange Counties, California, in the last three years with a similar pattern throughout the State of California and to have prohibited Jews from being on civilian criminal panels which heard Krain's cases by manipulating judicial appointments and assignments even extending to those hearing Krain's cases before the state medical licensing board. Deukmejian is alleged to have filed false Medi-Cal fraud charges against plaintiff/appellant that were dismissed and to have engaged in the conspiratorial acts alleged with defendant/respondent George and other defendants under color of state law.

Judge Harry Leinenweber dismissed Krain's claims for lack of jurisdiction (although proof of service on all defendants were timely filed) in the above action on August 31 and September 13, 1990, and Krain timely appealed on September 20, 1990.

2. Allegations

In the complaint against the U. of Michigan Hospitals (90-2554, U.S.D.C. No. 90 C 972) Krain contended that David Eagleson, Justice of the California Supreme Court, Robert Stone, a Los Angeles District Court Magistrate, and Judges Consuelo Marshall, Matthew Byrne and Terry Hatter of the United States District Court in Los Angeles "sought to block Krain from suing in the state and federal courts in California due to rampant anti-Semitic prejudice. . . ." The judges further "failed to disqualify themselves, despite anti-Semitic bias, failed to allow prosecution of the Nazi skinheads who burned and defaced Krain's Temple Beth Tikvah . . . , selectively printed cases in federal law books involving Jews and failed to include captioned Catholic or Republican defendants. . . ."

Krain further contends that defendants Michelle Witte and Fredi Jackson, his former legal secretaries, were agents of defendant United States government, who acted with "state agent Eagleson and other co-defendant Federal agents" by garbling Krain's pleadings to make him look ill, harassing him with tape recorded phone calls at odd hours, losing file documents and inserting things Krain did not say in his legal declarations.

Krain also alleges that officials of the U.S. Department of Justice and Treasury have stated to him via their agents that the five "judicial" defendants were paid off and/or were under investigation for receiving money from anti-Semitic organized crime figures, including Italians as Tony Accardo. "They were paid to help along negative findings for Krain because federal treasury officials alleged Krain was allegedly due a large inheritance which under terms of a trust would not be given to him until approximately age 50 years and which, if Krain were found mentally in-

competent, would go to relatives of the crime syndicate tax-free." (Complaint paragraph 23)

Krain further alleges that Herman Forman, M.D., "posed as a licensed medical doctor, who ordered a positron emission scan (P.E.T.) of plaintiff's brain without plaintiff's informed consent or a proper prior radiation history." Krain subsequently underwent the scan (which was normal) and, which was performed by defendant Dr. David Kuhl at the University of Michigan Hospital. Krain alleges that during the test he was administered twice the prescribed dose of 18F-2 deoxyglucose, thus shortening his life span. Krain contends that the medical defendants acted with the United States government in administering this toxic dose of radiation (as determined by consulting physicians at the U. of California, San Francisco, and U. of Tennessee Medical Center) in that they were doubles employed by the United States government and not the actual parties and investigated Krain using illegal tactics and intimidated Krain's state and federal judicial proceedings due to federal anti-Semitism of United States employees.

In Count II, Krain has sued all defendants for intentional infliction of emotional distress, and in Count IV for civil fraud and misrepresentation. In Count III, Krain has sued the University of Michigan Hospital, Herbert Forman, M.D. ("Forman") and David Kuhl, M.D. ("Kuhl") for medical malpractice, alleging that Forman and Kuhl are federal agents and/or physicians who deliberately gave Krain improper doses of medication to aggravate and stress him.

In addition to damages in excess of one million dollars, Krain seeks in Count V to enjoin all defendants from further harassing him and "intentionally discriminating against him in illegal Federal and State Court rulings and psychiatric proceedings because he is a born Jew and Democrat."

Judge Paul Plunkett dismissed Krain's case *Krain v. U. of Michigan, et al.* as insubstantial and frivolous on July 11, 1990, and Krain timely appealed on July 18, 1990.

Respondents filed a motion for summary affirmance in *Krain v. U. of Michigan Hospitals, et al.* (90-2554) on September 2, 1990, and September 28, 1990, and opposition by Krain was filed on September 26, 1990.

Respondents filed motions for summary affirmance in *Krain v. George, et al.* on November 8, 1990, and which was opposed by petitioner on November 15, 1990.

Separate appellate panels of the 7th Circuit affirmed the motions for summary affirmance on December 4, 1990 (see Appendix A1-A4) and petitioner timely petitions for certiorari on both related cases dealing with similar appellate legal issues.

REASONS FOR GRANTING THE WRIT

I.

This Court Should Resolve The Conflict Between The 7th And Other Circuits (Notably The 9th Circuit) Regarding The Rights Of Pro Se Litigants And The Use Of The Summary Affirmance Procedure By The 7th Circuit To Deny Petitioner Due Process Of Law And Equal Protection Under The Federal 5th And 14th Amendments To The U.S. Constitution.

In *Mather v. Village of Mundelein,* 869 F.2d 356 (7th Cir 1989) the 7th Circuit contends that its summary affirmance procedure does not deny due process because

(1) the U.S. Supreme Court does the same thing.

(2) an appellant can always ask for rehearing if dissatisfied with the Appellate court ruling.

Petitioner disagrees in that (1) the U.S. Supreme Court is not the first line of review and establishes overall guidance and philosophy that does not necessarily depend on first-hand observation of specific legal details. *See Montana v. Hall*, 481 U.S. 400, 405-10, 107 S.Ct. 185, 95 L. Ed.2d 354 (1987).

Instead of 30 days' preparation of an appellate brief, an attorney or pro se litigant can be rushed in seven days on a motion for summary affirmance or 15 days in the case of a petition for rehearing. There is no need for 30 days' Federal Appellate rule preparation time; if Federal Appellate procedural rules can be circumvented and parties can rush to judgments by a procedure peculiar to the 7th Circuit. In a complicated civil or criminal case, legal theories could not be adequately researched; even in average cases as these are, one could barely read the record or prior legal opinions in that short time frame.

Certainly even in *Mather v. Mundelein, supra*, oral arguments were allowed in contrast to this case; also in that case a concurrent case was before the U.S. Supreme Court unlike Krain's situation where this Court does not know the underlying facts.

An appellate judge reading just a lower court's opinion does not know the *other* side or how it was presented below and can rush as in this case to affirm to protect prominent national fellow Republicans instead of reviewing the legal issue or allowing Democrats on the appellate court to hear the case.

If every appellate circuit would adopt summary affirmance,

(1) Legal argument would be rushed since appellate time guidelines would be hurried.

(2) There would be no need for the Federal Rules of Appellate Procedure.

(3) Two man panels permissible in some circuits would be assigned to motions rather than three man panels, denying the legislative intent of the Federal Rules of Appellate Procedure.

(4) Appeals could be timed to coincide with selecting specific judges on motion panels rather than circulating briefs to 15 or more Appellate justices on the circuit who would be drawn at random according to rules of most circuits; thus two or three Republicans could rule for their fellow sued Republicans as in this case and against Jews and Democrats (as Petitioner is). The Republican appointed U.S. attorney as in this case can select a week when favorable notices for his position are on the motion panel, and give seven days' time for petitioner to rush an inadequately researched reply as in the present case, and call that due process and equal protection under the law; no oral arguments would be held and misunderstandings about the underlying facts of the case could not be clarified.

In the *Krain v. U. of Michigan Hospitals* case for example no detailed opinion as to why summary affirmance was granted was given; this precludes a good baseline for U.S. Supreme Court review and again denied due process and equal protection. Two anti-Semitic appellate court justices could be called upon to decide a case disenfranchising appellant from getting a Jewish justice or non-anti-Semitic one from the 20-30 circuit justices available, as in this case.

To date no other U.S. Circuit Court of Appeals has cited *Mather, supra* with approval or indicated adoptance of the

summary affirmance procedures similar to *Mather* to petitioner's knowledge.

The 7th Circuit Appellate Court has noted in previous decisions, *Doe v. St. Joseph Hospital*, 788 F.2d 411, 415 (7th Cir. 1986) and *Ricketts v. Midwest National Bank*, 874 F.2d 1177 (7th Cir. 1989) that summary dismissal has many disadvantages:

1. It makes the appellate court a proponent rather than an independent entity.

2. It prejudices plaintiffs by depriving them of an opportunity to amend their complaint or prepare a *proper* opposition.

3. It leads to judicial inefficiency and a wasteful shuffling of lawsuits between district and appellate courts.

4. It affords less time to careful preparation and reasoning and lends itself to subjective bias, instinct and gut feelings rather than careful research and reasoning.

5. It prejudices pro se litigants with less resources than top law firms. A top law firm can assign ten attorneys to bury a pro se litigant who could not respond in a week to a detailed lower court opinion or even get a needed reporter's transcript in that short time.

As noted in *Williams v. Faulkner*, 837 F.2d 304 (7th Cir. 1988), citing *Brandon v. District of Columbia Board of Parole*, 734 F.2d 56, 69 (D.C. 1984), *cert. den.* 469 U.S. 1127, 105 S.Ct. 811, 83 L.Ed.2d 804 (1985), "In a close case, the Court should permit one claim to proceed at least to the point where responsive pleadings are required and should prevent through premature dismissal, the creation of appeals based on *incomplete* records." *See Duncan v. Duckworth*, 644 F.2d 653, 655 (7th Cir. 1981). Where the challenged complaint is one that has been prepared

without the benefit of legal expertise, it must be liberally construed to determine whether it meets this test. *French v. Heyne*, 547 F.2d 994, 996 (7th Cir. 1976). When it is not absolutely clear that a pro se plaintiff/appellant cannot amend the complaint to allege constitutional violations, it is error to dismiss the complaint without notifying the plaintiff/appellant of the complaint's deficiencies and allowing him leave to amend. *Noll v. Carlson* (1987 CA 9th) 809 F.2d 1146. Here the 9th Circuit differs from the recent case (7th Circuit) *Sakovich v. City of Kankakee*, 830 F.R.D. 394 cited by defendants and the court in *Krain v. U. of Michigan Hospitals, et al.*, and U.S. Supreme Court review is requested to clarify this issue. Unlike Sakovich's personal delusions, the Federal government has admitted to investigating Krain whose actions since previous Supreme and court petitions 90-305 and 90-716 can be judicially noticed under Federal Rules of Evidence 201 e.g. that his felony convictions have been reduced to misdemeanors and expunged and that Krain is neither a convicted felon nor legally incompetent contrary to Sakovich's situation. Krain's claims of excessive radiation are supported by recognized radiation experts at the U. of Tennessee and U. of California, San Francisco. Krain's claims of the use of FBI doubles to investigate him are supported by the FBI's own admissions and independent witnesses, tape recordings and the FBI's own published writings on criminal investigations and are not paranoid delusions. The FBI is not allowed to damage someone by misusing radiation to sterilize someone who it erroneously believes is a criminal or related to a criminal; (e.g. to persecute someone because he is rumored to be the Aga Khan's illegitimate son or Al Capone's illegitimate son or a Jew).

CIVIL RIGHTS ALLEGATIONS ARE PROPERLY PLED

Specifically, at page 3353, the U.S. Supreme Court in *United Brotherhood of Carpenters v. Scott*, 103 S.Ct. 3352-3353:

> Conspiracy statute is not limited by constraints of the 14th Amendment, and it constitutionally can and does protect from interference by purely private conspiracies, rights protected by the 13th Amendment and right to travel guaranteed by Federal Constitution. Section 1985(3) constitutionally can and does protect those rights from interference by purely private conspiracies.

II.

This Court Should Resolve The Conflict Between The U.S. Supreme Court And 7th And Other Federal Circuits As To Whether Jews Are A Race And Entitled To Sue As Individuals Under 42 USC 1981 And Whether A Complaint Under This Section Could Be Dismissed As Frivolous.

Krain's pleadings were erroneously discounted contrary to the presumption of truth assumed under *O'Hare International Bank v. Hampton*, 437 F.2d 1173 (7th Cir. 1971). The plausibility of ethnic (anti-Semitic) discrimination was mysteriously ignored by two 7th Circuit appellate panels with no Democrats and no practicing Jews with a summary rush to judgment and no consultation with the other 20 circuit appellate justices who included Jews. Appellant is a member of Chicago's Temple Sholom and Fullerton, California's Temple Beth Tikvah. This cause of action by prior U.S. Supreme Court and 7th Circuit decisions is not frivolous. (See below)

By its own terms, the standard for dismissal is a rigorous one. *Winslow v. Walters*, 815 F.2d 1114, 1116 (7th Cir.

1987); 13B Wright, Miller & Cooper, *Federal Practice and Procedure*, Jurisdiction 2d Sec. 3564 (2d ed. 1984). The Supreme Court has repeatedly employed exacting adjectives to define the degree of insubstantiality required before a case is to be dismissed on these grounds—a claim must be "wholly," "obviously," or "plainly" insubstantial or frivolous; it must be "absolutely devoid of merit" or "no longer open to discussion." *Hagens v. Lavine*, 415 U.S. at 536-39, 94 S.Ct. at 1377-80 (citing cases). As these adjectives imply, insubstantiality dismissals should be applied only in extraordinary circumstances. "[I]f there is any foundation of plausibility to the federal claim federal jurisdiction exists . . . Jurisdiction is not lost because the court ultimately concludes that the federal claim is without merit." 13B Wright, Miller & Cooper, *Federal Practice and Procedure*, Jurisdiction 2d Sec. 3564 (2d ed. 1984).

The *Hagens* court went on to emphasize that: The limiting words 'wholly' and 'obviously' have cogent legal significance. In the context of the effect of prior decisions upon the substantiality of constitutional claims, those words import that claims are constitutionally insubstantial only if the prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 U.S.C. Sec. 2281. A claim is insubstantial only if ' "its unsoundness so clearly results from the previous decisions of this court as to foreclose the subject and leave no room for the interference that the question can be the subject of controversy." '

While all complaints should be liberally construed in the spirit of Rule 8(f) ("All pleadings shall be so construed as to do substantial justice"), the mandate of *Haines v. Kerner*, 404 U.S. 519, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972), is applicable to a district court's substantiality review of a pro se plaintiff's complaint. Thus the district court is

required to liberally construe the pro se plaintiff's pleadings, "however inartfully pleaded." *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S.Ct. 285, 292, 50 L.Ed.2d 251 (1976) (reaffirming the mandate of *Haines*). *See also Hughes v. Rowe*, 449 U.S. 519, 101 S.Ct. 175, 66 L.Ed.2d 163 (1980) (reviewing and applying the "settled law" arising from *Haines*). The purpose of this more solicitous review is to insure that pro se pleadings are given "fair and meaningful" consideration. *Matzker v. Herr*, 748 F.2d 1142, 1146 (7th Cir. 1984) (quoting *Carruth v. Pinkney*, 683 F.2d 1044, 1050 (7th Cir. 1982)).

There were appeals from denials of district court requests for a preliminary injunction asking that the justices who were anti-Semitic not continue to sit on petitioner's case. *See Mayo v. Lakeland Highlands Canning Co.*, 309 U.S. 310 (1940).

In 1987, the U.S. Supreme Court specifically held in *St. Francis College v. Al-Khazraji*, 481 U.S. ____, 107 S.Ct. 2022, 95 L.Ed.2d 2581, that a pleading is proper under 42 USC 1981 if a litigant alleges discrimination based upon racial discrimination as a born Jew or born Arab, e.g., facial and ethnic characteristics (protuberant nose, accent, name, "pushiness") and this plaintiff/appellant has adequately done so in alleging these and a long prior series of anti-Semitic acts by some of the California defendants/respondents.

Krain had a right to litigate 42 U.S.C. Sec. 1981 violations against justices under this Court's holding in *St. Francis College v. Al-Khazraji*, (1987) 107 S.Ct. 2022, 95 L.Ed.2d 2582, and the Seventh Circuit decision deciding Jews are a race as well as a religion. *Bachman v. St. Ramos Congregation*, 902 F.2d 1259 (7th Cir. 1990), and *Malholm v. Colls and Company*, 885 F.2d 1305 (7th Cir. 1989), although the 9th circuit and 11th circuit disagree.

III.

This Court Should Resolve The Conflict Between The 7th Circuit, The U.S. Supreme Court And Other Federal Appellate Circuits As To Whether Petitioner Could Have Maintained A Federal Claim By Dropping Non-Diverse Parties To Maintain Federal Diversity In The Absence Of Any Other Constitutional Claim And Whether State Claims Would Be Prejudiced and Whether A Pro Se Litigant Should Have Been Given Specific Notice And Detailed Reasons As To Why His Complaints Were Dismissed As Frivolous And Whether His Claims Had Merit Or Could Be Amended To State A Claim With Merit.

Krain's state complaints for malpractice, intentional infliction of emotional distress and civil fraud were properly pled and should not have been dismissed since (1) state claims would have been prejudiced and (2) non-diverse defendants should have been dropped maintaining federal diversity and significant (not frivolous) causes of action.

This court is requested to grant the petition to clarify this issue for all circuits since anti-Semitic or anti-Black judges could deny review of similar issues for civil rights litigants with impunity defeating the legislative intent of the civil rights laws.

Here petitioner was given minimal or no reasons for denial of his appeal with the court in *Krain v. U. of Michigan Hospital, et al.* while indicating appellant's argument regarding dropping non-diverse parties to maintain federal diversity jurisdiction (if there is no constitutional claim) was not lacking in merit. No detailed explanation as to why the court considered appellant's claim frivolous is given depriving petitioner Krain of due process. The U.S. Supreme Court in *Newman-Green Inc. v. Alfonzo Lorrain*, 109 S.Ct. 2218, 2221, 104 L.Ed.2d 893 (1989) authorized dropping of non-diverse parties at the appellate level to

maintain diversity jurisdiction. Diversity would allow trying the medical malpractice and intentional infliction of emotional distress claims.

The lower court improperly considered defendants/respondents' motion to dismiss the complaint under *Robinson v. Bantam Books, Inc.*, (1987) 49 FRD 139 and should not have failed to take jurisdiction of concurrent state claims that because of delay by defendants/respondents and the court, would otherwise be time-barred by state courts for statute of limitations purposes under *Hanson v. Columbus Bank and Trust Co.*, 651 F.2d 320 (5th Cir. 1981). Further judicial officers were liable as individuals abusing discretionary authority, acting in private anti-Semitic meetings, illegally assigning themselves to Krain's cases to obstruct them and failing to disqualify themselves because of a personal and financial interest in the case, despite state statutes and color of state law (California) to do so per U.S. Supreme Court decision in *Cleavinger v. Saxner*, 106 S.Ct. 496, 501 (1985), and *Westfall v. Erwin*, 98 L.Ed.2d 619 (1988), 107 S.Ct. 408, and the Ninth Circuit case *Saul v. Larsen*, 847 F.2d 573 (9th Cir. 1988).

Actions are also pled against the judges as individuals, not in their judicial duties, and allegations condoning temple burning/office burning and circulation of confidential medical records are not normal discretionary duties of a judge, and defendants are liable under *Cleavinger v. Saxner, supra*, and *Westfall v. Erwin, supra*, and *Saul v. Larsen, supra*.

As noted by the 11th Circuit in *Anthony v. Baker*, 767 F.2d 657 (1985), state and federal officers are liable under Section 1983 and 1985(2) when they conspire to procure groundless state indictments and charges based on fabricated evidence or false, distorted, perjurious testimony presented to official bodies in order to maliciously bring

about a citizen's trial or conviction as is alleged in Krain's complaint stalled by defendants.

As noted by the Ninth Circuit in *Saul v. Larsen, supra,* citing the U.S. Supreme Court in *Westfall v. Erwin, supra,* the central purpose of official immunity promoting effective government would not be furthered by shielding an official from state tort law liability without regard to whether the alleged tortious conduct is discretionary in nature . . . not every discretionary function or act warrants immunity.

A court is not required to dismiss state claims of a diverse plaintiff for lack of complete diversity where non-diverse plaintiff can invoke a court's federal question jurisdiction as an independent basis of jurisdiction. *Thibodeaux v. Foremost Insurance Company,* (1985 N.D. Ind.) 605 F.Supp. 653.

Newman-Green, Inc. v. Alfonzo Larrain, supra, authorizes the diversity jurisdiction cited with approval by the 7th Circuit in *F and HR Farman-Farmason Con. Eng. v. Harza Eng.,* 882 F.2d 281 (7th Cir. 1989).

FRCP 21 provides that misjoinder of parties is not a grounds for the dismissal of an action.

Where a federal court exercises pendent jurisdiction over state law claims joined with federal claims, an independent basis for venue over the state law claims is unnecessary. *Travis v. Anthis Imperial Ltd.,* 473 F.2d 515, 528-529 (8th Cir. 1973). A non-resident individual may be sued in Illinois if (1) he performs one of the acts enumerated in the Illinois long-arm statute, Ill. Rev. Stat. Ch. 110, Sec. 2-209; and (2) the minimum contacts required by due process are present. Deukmejian committing the acts enumerated herein had met the test by conspiring to affect Krain's Illinois civil rights as enumerated due

to alleged longstanding anti-Semitism through various California state offices maintained in Illinois and doing business here. In fact, the Illinois Attorney General represented George and Deukmejian (CR 12-14).

Pendent jurisdiction is invoked over defendants/respondents because they do business in Illinois through federal California state offices here (Excerpt of Record, pages 5-17). *McClub Services Inc. v. Stovall,* 714 F.Supp. 370 (1989) and *Burger King Corporation v. Rudzewisz,* 471 U.S. 462, 473, 105 S.Ct. 2174, 2182, 85 L.Ed.2d 528 (1985).

As noted in *Hagens v. Lavine,* 415 U.S. 537, civil suits conferring jurisdiction on a district court generally are not to be dismissed, especially state law claims pendent to federal constitutional claims.

As specifically noted at page 437:

> . . . claims are constitutionally insubstantial only if prior decisions inescapably render the claims frivolous; previous decisions that merely render claims of doubtful or questionable merit do not render them insubstantial for the purposes of 28 USC 2281.

At noted in *Hanson v. Columbus Bank and Trust Company,* (5th Cir. 1981) 651 F.2d 302, 325, this court should remand this case to the District Court and should find:

> That a plaintiff's state law claims will be time barred if dismissed is certainly a factor, if not a determinative factor, a district court should consider in deciding whether to maintain jurisdiction over pendent state claims.

As noted in *Stein v. Reynolds Securities Inc.* (C.A. Fla. 1982) 667 F.2d 33, there is tolling of the statute of limitations by the district court's actions if the suit is dismissed without prejudice.

As a court in the Ninth Circuit has ruled in *Hopkins Amusement Enterprises Inc. v. Harry Nace Co.*, (D. Ariz. 1987) 657 F.Supp. 1037, a federal court may retain pendent jurisdiction over a state claim that is barred by the statute of limitations even though all federal claims have been dismissed. *See Stein v. Reynolds Securities supra* at 33, 34. Clearly, appellant has been prejudiced by the illegal dismissal of state claims in the lower court.

Judges or justices are not immune from declaratory or prospective and/or injunctive relief which is what is sought by Krain in this case and appellant had 28 USC 1983 jurisdiction. *Harris v. Harvey*, (C.A. 7, 1979) 605 F.2d 330, 445 U.S. 938, 100 S.Ct. 133. As noted in *Aschelman v. Pope*, (1986) 793 F.2d 1072, immunity does not extend to actions for prospective injunctive relief only, and noted that immunity afforded judges and prosecutors is not absolute.

CONCLUSION

Wherefore, Petitioner respectfully prays that this Honorable Court grant this Petition and issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted,

LAWRENCE S. KRAIN, M.D.
5415 North Sheridan Road
Chicago, Illinois 60640
(312) 878-4676

Pro Se

APPENDIX

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

December 4, 1990

Before

Hon. HARLINGTON WOOD, JR., *Circuit Judge*
Hon. RICHARD D. CUDAHY, *Circuit Judge*
Hon. RICHARD A. POSNER, *Circuit Judge*

LAWRENCE S. KRAIN, M.D.,

Plaintiff-Appellant

No. 90-2554 v

UNIVERSITY OF MICHIGAN HOSPITAL, etc., et al.,

Defendants-Appellees

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 90 C 972—Judge Paul E. Plunkett

This matter comes before the court for its consideration of the following documents:

1. **"MOTION FOR SUMMARY AFFIRMANCE"** filed herein on September 21, 1990, by counsel for the appellees.
2. **"DECLARATION OF LAWRENCE S. KRAIN, M.D. IN OPPOSITION TO MOTION FOR SUMMARY AFFIRMANCE"** filed herein on September 26, 1990, by the pro se appellant.

3. **"RESPONSE JOINING IN THE FEDERAL DEFENDANTS' MOTION FOR SUMMARY AFFIRMANCE"** filed herein on September 28, 1990, by counsel for the appellees.

Summary affirmance is appropriate when the court determines that full briefing would not be useful and that motions papers and the lower court record show the appropriate disposition with sufficient clarity. *Mather v. Village of Mundelein*, 869 F.2d 356, 357 (7th Cir. 1989). This case falls squarely within these requirements. Although appellant's argument regarding dropping non-diverse parties is not completely lacking in merit, this court concurs in the district court's conclusion that appellant's case is so frivolous so as to not invoke federal court jurisdiction. *Ricketts v. Midwest National Bank*, 874 F.2d 1177 (7th Cir. 1989). Accordingly,

IT IS ORDERED that appellees' motion for summary affirmance is GRANTED.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit
Chicago, Illinois 60604

December 4, 1990

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. DANIEL A. MANION, *Circuit Judge*
Hon. MICHAEL S. KANNE, *Circuit Judge*

LAWRENCE S. KRAIN, M.D.,

Plaintiff-Appellant

No. 90-3079 v

RONALD GEORGE, etc., et al.,

Defendants-Appellees

Appeal from the United States District Court for the
Northern District of Illinois, Eastern Division.
No. 90 C 3645—Judge Harry D. Leinenweber

This matter comes before the court for its consideration of the following documents:

1. "MOTION FOR SUMMARY AFFIRMANCE" filed herein on November 8, 1990, by counsel for the appellees.
2. "OPPOSITION TO MOTION FOR SUMMARY AFFIRMANCE; DECLARATION OF LAWRENCE S. KRAIN, M.D." filed herein on November 15, 1990, by the pro se appellant.

On consideration thereof,

IT IS ORDERED that appellees' motion for summary affirmance is hereby GRANTED.

Supreme Court, U.S.
FILED
JAN 22 1991
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 90-1116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LAWRENCE S. KRAIN,

Petitioner,

v.

RONALD GEORGE, LAUGHLIN WATERS, GEORGE DEUKMEJIAN, RALPH GEFFEN, JOHN G. DAVIES,

and

UNIVERSITY OF MICHIGAN HOSPITALS, DAVID KUHL, M.D., DAVID EAGLESON, ROBERT STONE, CONSUELO MARSHALL, MATTHEW BYRNE, TERRY HATTER, UNITED STATES GOVERNMENT, FREDI JACKSON, MICHELLE WITTE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

SUPPLEMENTAL APPENDIX
U.S. Supreme Court (12.2 Case)

LAWRENCE S. KRAIN, M.D.
5415 North Sheridan Road
Chicago, Illinois 60640
(312) 878-4676

Pro Se

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No. 90-1116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1990

LAWRENCE S. KRAIN,

Petitioner,

v.

RONALD GEORGE, LAUGHLIN WATERS, GEORGE DEUKMEJIAN, RALPH GEFFEN, JOHN G. DAVIES,

and

UNIVERSITY OF MICHIGAN HOSPITALS, DAVID KUHL, M.D., DAVID EAGLESON, ROBERT STONE, CONSUELO MARSHALL, MATTHEW BYRNE, TERRY HATTER, UNITED STATES GOVERNMENT, FREDI JACKSON, MICHELLE WITTE,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

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SUPPLEMENTAL APPENDIX
U.S. Supreme Court (12.2 Case)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

LAWRENCE S. KRAIN, M.D.

v. Case Number: 90 C 972

UNIVERSITY OF MICHIGAN HOSPITAL, et al.

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the motion of defendants University of Michigan Hospital and David Kuhl, M.D. to dismiss is granted on the grounds that the court lacks subject matter jurisdiction.

The complaint is dismissed without prejudice to plaintiff, Lawrence S. Krain, M.D., filing the complaint in the appropriate state court.

Date: JULY 10, 1990

H. STUART CUNNINGHAM
Clerk

/s/ Theresa B. Kinney
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 90 C 972 Date: July 10, 1990

Name of Assigned Judge: PLUNKETT

Case Title: Lawrence S. Krain, M.D. vs.
University of Michigan Hospital

* * * * *

DOCKET ENTRY:

(1) ☒ Judgment is entered as follows:

(2) ☐ [Other docket entry:]

ENTER MEMORANDUM OPINION AND ORDER: the Hospital and David Kuhl, M.D.'s motion to dismiss is granted on the grounds that this court lack subject matter jurisdiction. The complaint is dismissed without prejudice to Krain filing the complaint in the appropriate state court. Status hearing and ruling date of July 31, 1990 is stricken.

* * * * *

(12) ☒ (For further detail see

☐ order on the reverse of

☒ order attached to
the original minute order form.)

* * * * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LAWRENCE S. KRAIN, M.D.,

Plaintiff,

v.

UNIVERSITY OF MICHIGAN HOSPITAL,
a Michigan corporation; et al.,

Defendants.

No. 90 C 972
Hon. Paul E. Plunkett

MEMORANDUM OPINION AND ORDER

Plaintiff Lawrence S. Krain, M.D. ("Krain") has filed a five-count complaint against twelve defendants, who include the University of Michigan Hospital ("Hospital"), two physicians, several alleged federal agents, a California Supreme Court justice, three federal judges, a federal magistrate, and the United States government. Count I alleges violation of Krain's civil and constitutional rights. Count II alleges a pendent state law action for intentional infliction of emotional distress, and Count IV for civil fraud and misrepresentation. In Count III of his complaint, Krain has sued the Hospital and physicians for medical malpractice. Before this court today is the Hospital and David Kuhl, M.D.'s motion to dismiss Krain's complaint. For the following reasons, we grant defendants' motion on the grounds that we lack subject matter jurisdiction.

Allegations

In Count I of his twenty-nine page complaint, plaintiff Lawrence S. Krain, M.D. has sued all defendants for violation of his civil rights under 42 U.S.C. §§ 1981, 1983, 1985, 2000 *et seq.* In the same count he alleges violation of his rights under the Fourth, Sixth, Eighth, Ninth, Tenth and Fourteenth Amendments of the United States Constitution.

Krain contends that David Eagleson, Justice of the California Supreme Court, Robert Stone, a Los Angeles District Court Magistrate, and Judges Consuelo Marshall, Matthew Byrne and Terry Hatter of the United States District Court in Los Angeles, "sought to block Krain from suing in the state and federal courts in California due to rampant anti-Semitic prejudice . . . ." Complaint, ¶ 16. The judges further "failed to disqualify themselves, despite anti-Semitic bias, failed to allow prosecution of the Nazi skinheads who burned and defaced Krain's Temple Beth Tikvah . . ., selectively printed cases in federal law books involving Jews and failed to include captioned Catholic or Republican defendants . . . ." Complaint, ¶¶ 20, 21.

Krain states in his complaint that defendant Albert Baskind ("Baskind") "is the name of one of the four quadruplets who interchanged themselves . . . and were agents of defendant United States of America." Complaint, ¶ 13. Baskind allegedly acted with the other defendants to "shorten plaintiff's lifespan." Complaint, ¶ 14. Krain further contends that defendants Michelle Witte and Fredi Jackson, his former legal secretaries, are agents of defendant United States government, who acted with "state agent Eagleson and other co-defendant Federal agents" by, *inter alia*, garbling Krain's pleadings to make him look ill, harassing him with taped recorded phone calls at odd hours," losing file documents and inserting things Krain did not say in his declaration. Complaint, ¶ 17.

Krain also alleges that officials of the U.S. Departments of Justice and Treasury have stated that the five "judicial" defendants paid off and/or were under investigation for receiving money from organized crime figures, including Tony Accardo. "They were paid to help along negative findings for Krain because Krain was due a large inheritance which under terms of a trust would not be given to him until approximately age 50 years and which, if Krain were found mentally incompetent, would go to relatives of the crime syndicate and/or Yasmin Khan." Complaint, ¶ 23.

Krain further alleges that Herman Forman, M.D., "posed as a licensed medical doctor, who ordered a positron emission scan (P.E.T.) of plaintiff's brain without plaintiff's informed consent . . . ." Complaint, ¶ 9. Krain subsequently underwent the scan, which was performed by defendant Dr. David Kuhl at the University of Michigan Hospital. Krain alleges that during the test he was administered twice the prescribed dose of 18F-2 deoxygucose, thus shortening his life span. Krain contends that the medical defendants acted with the United States government in administering this toxic dose of radiation.

In Count II, Krain has sued all defendants for intentional infliction of emotional distress, and in Count IV for civil fraud and misrepresentation. In Count III, Krain has sued University of Michigan Hospital, Herman Forman, M.D. ("Forman") and David Kuhl, M.D. ("Kuhl") for medical malpractice, alleging that Forman and Kuhl are federal agents and/or non-physicians who deliberately gave Krain medication to aggravate and stress him.

In addition to damages in excess of one million dollars, Krain seeks in Count V to enjoin all defendants from further harassing him and "intentionally discriminating against

him in illegal Federal and State Court rulings and psychiatric proceedings because he is a born Jew and Democrat." Complaint, ¶ 26.

Discussion

As in all motions to dismiss, the allegations of the complaint are taken as true along with reasonable inferences to be drawn from them in the light most favorable to the plaintiff. *Powe v. City of Chicago*, 664 F.2d 639, 642 (7th Cir. 1981). Defendants University of Michigan Medical Center and David Kuhl, M.D. have moved to dismiss Krain's complaint pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(3), 12(b)(6) and 12(b)(f) of the Federal Rules of Civil Procedure. However, we do not consider defendants' grounds for their motion to dismiss because we find that Krain's claims are too insubstantial to support our jurisdiction over the subject matter.[1] *See Baker v. Carr*, 369 U.S. 186, 82 S. Ct. 691, 71 L. Ed. 2d 663 (1962). Article III of the United States Constitution gives judicial power to the federal courts in all cases arising under the Constitution and the laws of the United States. U.S. Const. art. III, § 2. However, not every case "arising under" federal law is within federal question jurisdiction. The federal claim must be a substantial one. *Bell v. Hood*, 327 U.S. 678 (1946). If the claim is "so attenuated and unsubstantial as to be absolutely void of merit," a federal court has no power to entertain the suit. *Hagans v. Lavine*, 415 U.S. 528, ____, 94 S. Ct. 1372, 39 L. Ed. 2d 577 (1974), quoting *Newburyport Water Co. v. Newburyport*,

---

[1] Krain claims subject matter jurisdiction under 28 U.S.C.A. § 1332 and 28 U.S.C.A. §§ 1343(3) and 1343(4). However, his claim to diversity jurisdiction must fail, as plaintiff and defendants Albert Baskind and Herman Forman, M.D. are all residents of Illinois.

193 U.S. 561, 579, 24 S. Ct. 553, ____, 48 L. Ed. 785 (1904). The Supreme Court has repeatedly held that federal courts may dismiss claims that are "wholly insubstantial." *Bailey v. Patterson*, 369 U.S. 31, 33, 82 S. Ct. 549, 550-51, 7 L. Ed. 2d 512 (1962), or "obviously frivolous," *Hannis Distilling Co. v. Baltimore*, 216 U.S. 285, 288, 30 S. Ct. 326, 327 (1910). The standard for determining whether an action is frivolous, and thus subject to dismissal, is whether the action is one in which the plaintiff's realistic chances of success are slight. *Harvey v. Clay Cty. Sheriff's Dept.*, 473 F. Supp. 741 (W.D. Mo. 1979).

Defendants in this case include judicial officers who were performing judicial functions and were therefore immune from suit. Judges are not liable in civil actions for their judicial acts unless they have acted in the clear absence of all jurisdiction. *Barr v. Matteo*, 360 U.S. 564, 569 (1959) *citing to Bradley v. Fisher*, 13 Wall. 335. Judges will not be deprived of immunity because the actions they took were in error, were done maliciously, or were in excess of their authority. *John v. Barron*, 897 F.2d 1387 (7th Cir. 1990). Thus, Krain cannot present a claim against the magistrate, judges and supreme court justice named in his complaint.

Further, Krain does not make any allegations from which we can determine or infer that the alleged actions of *any* of the defendants were taken in accord with an official policy. Therefore, none of the defendants can be liable under 42 U.S.C. § 1983. *See Monell v. Department of Social Serv. of the City of New York*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978). "Vague and conclusory allegations of official participation in civil rights violations are not sufficient to withstand a motion to dismiss." *Lucy v. Board of Regents*, 673 F.2d 266, 268 (9th Cir. 1982). Moreover, it is impossible to determine what

constitutional rights Krain lost at the hands of defendants, or indeed under what legal theory he is proceeding at any time in his complaint. *See Kakovich v. City of Kankakee*, 130 F.R.D. 394 (1990). Krain has made no rational argument in law or fact to support his claim for relief. Consequently, we have no power to adjudicate this case.

Conclusion

For the reasons stated above, we dismiss the complaint without prejudice to Krain filing the complaint in the appropriate state court.

ENTER:

/s/ Paul E. Plunkett
United States District Judge

DATED: July 10, 1990

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUDGMENT IN A CIVIL CASE

LAWRENCE S. KRAIN, M.D.

v. Case Number: 90 C 3645

RONALD GEORGE, ET AL.

☐ Jury Verdict. This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ Decision by Court. This action came before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the defendants Judge Laughlin Waters, Judge John G. Davies and Magistrate Ralph Geffen's to dismiss is granted on the grounds that the court lacks subject matter jurisdiction.

The court having granted defendants Ronald George and George Deukmejian's motion to dismiss for lack of personal jurisdiction on August 31, 1990, this case is dismissed in its entirety.

Date: September 13, 1990

H. STUART CUNNINGHAM
Clerk

/s/ Wanda Parker
(By) Deputy Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 90 C 3645 Date: August 31, 1990

Name of Assigned Judge or Magistrate:
Judge Leinenweber
Magistrate Bucklo

Case Title: Lawrence S. Krain v. Ronald George, Laughlin Waters, George Deukmejian, Ralph Geffen and John G. Davies

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and (b) state briefly the nature of the motion being presented]

(a) Defendants Ronald George and George Deukmejian; (b) FRCP 12(b) motion to dismiss for lack of personal jurisdiction, improper venue, failure to state claim upon which relief can be granted; Motion pursuant to Rule 3.12 filed concurrently.

* * * * *

DOCKET ENTRY:

(1) ☐ Judgment is entered as follows:

(2) ☒ [Other docket entry:]

Defendants' Ronald George and George Deukmejian's motion to dismiss for lack of personal jurisdiction is granted.

(3) ☒ Filed motion of [use listing in "MOTION" box above].

* * * * *

☒ Docketing to mail notices.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

Case Number: 90 C 3645 Date: 9/13/90 @ 9:30 am

Name of Assigned Judge: Leinenweber

Case Title: Lawrence S. Krain, M.D. v. Ronald George, et al.

MOTION: (In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3d-party plaintiff, and b) state briefly the nature of the motion being presented.)

Fred Foreman - U.S. Attorney

Jonathan C. Haile - Asst. U.S. Attorney

MOTION: MOTION TO DISMISS

* * * * *

DOCKET ENTRY:

(1) ☒ Judgment is entered as follows:

(2) ☐ [Other docket entry:]

Defendants Judge Laughlin Waters, Judge John G. Davies and Magistrate Ralph Geffen's motion to dismiss is granted on the grounds that this court lack personal jurisdiction.

(3) ☒ Filed motion of [use listing in "MOTION" box above.]

* * * * *

☒ Docketing to mail notices.

☒ Mail CIV-31 form.

Respectfully submitted,

LAWRENCE S. KRAIN, M.D.
5415 North Sheridan Road
Chicago, Illinois 60640
(312) 878-4676

Pro Se